FH [redacted]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]
c/o [redacted]
[redacted]
[redacted]

DECISION

MRA/154986

PRELIMINARY RECITALS

Pursuant to a petition filed January 21, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the Pierce County Department of Human Services in regard to Medical Assistance, a hearing was held on February 20, 2014, at Ellsworth, Wisconsin.

The issue for determination is whether, when determining the petitioner's share of his medical costs, money paid to him for a mineral lease continues to count toward his income after he quitclaimed the underlying asset to his wife.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[redacted]
c/o [redacted]
[redacted]
[redacted]

Petitioner's Representative:

Attorney [redacted]
[redacted]
[redacted]
[redacted]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Carol Hilsgen
Pierce County Department of Human Services
412 West Kinne Street
PO Box 670
Ellsworth, WI 54011

ADMINISTRATIVE LAW JUDGE:
Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [redacted]) has resided in a nursing home in Pierce County since January 2012. His wife resides in the community.

2. The petitioner applied for medical assistance on June 28, 2013. On December 9, 2013, the county agency notified him that his share of his medical costs would be $1,851.19 per month as of January 1, 2014. The agency allowed him to allocate $2,016 per month to his wife.

3. The petitioner held mineral rights in a property in North Dakota. He conveyed this property to his wife on July 31, 2013. That property paid an average of $2,486.90 per month. Those payments continued to be made to him until after February 10, 2014, when he notified the mineral company that he had transferred the assets to his wife.

4. The petitioner sold property in Wisconsin on a land contract on December 28, 2012. The payments on that property are $100 per week with 6% annual interest. As of December 9, 2013, the interest portion of the payments averages $84.54 per month. He transferred this contract to his wife on February 4, 2014.

5. The petitioner receives $1,865 and his wife receives $569 per month in social security.

6. The petitioner has a health insurance premium of $324.25 per month.

DISCUSSION

The procedural background of this matter is somewhat messy. There are two agency decision letters in the file, one dated October 18, 2013, which affects benefits retroactive to June 1, 2013, and the second dated December 9, 2013, which affects benefits from January 1, 2014, forward. In addition, the petitioner has another hearing scheduled this month concerning a January 27, 2013, decision affecting benefits from February 1, 2014, forward. He believes that the hearing already held can dispose of the last matter. This means that the October 18 and December 9 agency decisions remain to be resolved. Those challenging a negative medical assistance decision must do so within 45 days of the date of the decision or the date it takes effect, whichever is later. Wis. Admin. Code § HA 3.05(3). If an appeal is late, the Division of Hearings and Appeals loses its jurisdiction to consider it. The petitioner appealed on January 24, 2014, which is 98 days after the October 18, 2013 decision. Therefore, DHA has no legal authority to consider that decision. It can consider only the December 9, 2013, decision affecting benefits as of January 1, 2014.

Medical assistance rules require nursing home residents to "apply their available income toward the cost of their care." Wis. Admin. Code § DHS 103.07(1)(d). Available income does not include a $45 monthly personal needs allowance or the cost of health insurance. Wis. Admin. Code, § DHS 103.07(1)(d)1 and 3; Wis. Stat. § 49.45(7)(a). However, medical assistance law contains provisions that grant an allowance to the spouse of an institutionalized person so that she does not fall into poverty. *See* Wis. Stat. § 49.455(4). The minimum monthly maintenance needs allowance currently is the lesser of $2,898 or $2,585 plus excess shelter costs. *Medical Eligibility Handbook*, § 18.6.2. Excess shelter costs are shelter costs above $775.50. *Id*. The shelter expenses of the petitioner's spouse are less than $775.50, so her allowance is $2,585.

The county agency determined that each month the petitioner receives $1,865 in social security, $84.54 from the interest on a land contract, and $2,486.90 in mineral payments through property he owns in North Dakota. It determined that his wife receives $569 per month in social security. It allowed him to allocate $2,016 to her so that she could meet her $2,585 minimum monthly needs. After deducting his $45 personal needs allowance and the $324.25 he pays in insurance, it determined that the must contribute $1,851.19 per month to his medical costs.

The petitioner does not dispute these figures but contends that the mineral income should be attributed to his spouse rather than to him because she has owned the property since July 31, 2013. He also contends that future land contract payments should be attributed to his wife because he assigned the contract to her on February 4, 2014. However, because this decision examines the agency's December 9, 2013, determination of what his benefits should be as of January 1, 2014, that transfer is not technically before me. I will comment on it because nothing prevents the parties from entering into a stipulation consistent with my decision in the matter now before me.

The primary issue is whether the county agency correctly continued to attribute income derived from mineral rights in the North Dakota property to the petitioner after he quitclaimed the property to his wife. Although he quitclaimed the property to her in July, the mineral company continued to make the payments to him through February 2014 because the deed was not recorded until January 27, 2014, and his attorney did not notify the company until February 10, 2014. The petitioner correctly points out that real estate is transferred when the deed is executed and not when it is recorded. *See Medicaid Eligibility Handbook,* § 17.2.1 and Wis. Stat. § 706.10. He also contends that once the real property was transferred in July 2013, the bundle of rights inherent in the property, including the income it produced, was also transferred. Therefore, from July 31, he argues, the income from the leases should be attributed to his spouse rather than him.

The corporation counsel representing the agency concedes that when property is transferred, it comes with a bundle of rights, including income. He contends that this does not matter because there is a land contract between the petitioner and the mineral company that remains in effect and makes him the one receiving the income. The corporation counsel is confused, which is understandable given the convoluted facts and that he did not appear until after the hearing. The land contract applies to another piece of property, which is in Wisconsin and not North Dakota. Regardless, general principles concerning property are not as important as the language of Wis. Stat. § 49.455(3), which pertains specifically to spousal impoverishment matters and spells out how income should be attributed. The statute states:

> (a) Except as provided in par. (b), no income of a spouse is considered to be available to the other spouse during any month in which that other spouse is an institutionalized spouse.
>
> (b) Notwithstanding ch. 766 [the Wisconsin Marital Property law], for the purposes of sub. (4), the following criteria apply in determining the income of an institutionalized spouse or a community spouse:
>
> .1. Except as determined under subd. 2. or 3., unless the instrument providing the income specifically provides otherwise:
>
> a. Income paid solely in the name of one spouse is considered to be available only to that spouse.
>
> b. Income paid in the names of both spouses is considered to be available one-half to each spouse.
>
> c. Income paid in the name of either or both spouses and to one or more other persons is considered to be available to each spouse in proportion to the spouse's interest or, if payment is made to both spouses and each spouse's individual interest is not specified, one-half of the joint interest is considered to be available to each spouse.
>
> 2. Except as provided in subd. 3., if there is no trust or other instrument establishing ownership, income received by a couple is considered to be available one-half to each spouse.
>
> 3.Subdivisions 1. and 2. do not apply to income other than income from a trust if the institutionalized spouse establishes, by a preponderance of the evidence, that the ownership interests in the income are other than as provided in subds. 1. and 2.

Throughout the months relevant to this decision, the petitioner was institutionalized and all the income from the mineral leases was paid solely in his name. The instrument providing the income is whatever contract existed between him and the mineral company. This contract was not put into evidence, but it is almost certainly did not provide for payments to go to anyone other than him before the company was notified in February 2014 that his wife had taken over the property. Under § 49.455(3)(b)1 the money is

available to him unless he establishes by the preponderance of the evidence that his wife has the ownership interest in the income. The quitclaim deed signed on July 31, 2013, meets this burden. Because of this, the income from the mineral lease must be attributed to her. However, because the petitioner did not appeal the earlier agency decision, the income cannot begin to be attributed to her until January 1, 2014. I note that the income from the land contract should be attributed to her from February 4, 2014, forward. (As noted, this does not directly affect the current matter, but it does affect the pending matter.) I will remand this matter to the county agency to redetermine the petitioner's benefits from January 1, 2014, forward based upon this decision.

I note that the agency determined that the petitioner's total assets are under $50,000. I am skeptical that property that is producing over $2,000 in income a month is currently worth so little. As [redacted] discovered, fuel deposits can increase the value of one's property. Nevertheless, this is what the agency found, and I have no evidentiary basis to overturn that decision.

CONCLUSIONS OF LAW

1. The petitioner has not filed a timely appeal of any agency decision affecting benefits before January 1, 2014.
2. The income from the North Dakota mineral leases must be attributed to the petitioner's spouse from January 1, 2014, forward.
3. The income from the land contract must be attributed to the petitioner's spouse from February 4, 2014, forward.

THEREFORE, it is **ORDERED**

That this matter is remanded to the county agency with instructions that within 10 days of the date of this decision it redetermine the petitioner's share of his medical costs and his allocation of income to his spouse. When doing so, income from the North Dakota leases shall be attributed to his spouse as of January 1, 2014, and income from the land contract shall be attributed to her as of February 4, 2014. This decision shall be retroactive to January 1, 2014. If the petitioner disagrees with the agency's calculations, he may file a new appeal. Any new appeal will not affect the conclusions of law established in this decision.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Madison,
Wisconsin, this 7th day of March, 2014

_____

\sMichael D. O'Brien
Administrative Law Judge
Division of Hearings and Appeals

State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: http://dha.state.wi.us

The preceding decision was sent to the following parties on March 7, 2014.

Pierce County Department of Human Services
Division of Health Care Access and Accountability
Attorney [redacted]